

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton; and
Robert G. Taub

Nemaha Post Office
Nemaha, Nebraska

Docket No. A2012-55

ORDER AFFIRMING DETERMINATION

(Issued February 22, 2012)

I. INTRODUCTION

On December 15, 2011, the Postal Service advised the Commission that it “will delay the closing or consolidation of any Post Office until May 15, 2012.”¹ The Postal Service further indicated that it “will proceed with the discontinuance process for any Post Office in which a Final Determination was already posted as of December 12, 2011, including all pending appeals.” *Id.* It stated that the only “Post Offices” subject to closing prior to May 16, 2012 are those that were not in operation on, and for which a Final Determination was posted as of, December 12, 2011. *Id.* It affirmed that it “will not close or consolidate any other Post Office prior to May 16, 2012.” *Id.* at 2. Lastly,

¹ United States Postal Service Notice of Status of the Moratorium on Post Office Discontinuance Actions, December 15, 2011, at 1 (Notice).

the Postal Service requested the Commission “to continue adjudicating appeals as provided in the 120-day decisional schedule for each proceeding.” *Id.*

The Postal Service’s Notice outlines the parameters of its newly announced discontinuance policy. Pursuant to the Postal Service’s request, the Commission will fulfill its appellate responsibilities under 39 U.S.C. § 404(d)(5).

On November 4, 2011, Rick Huey (Petitioner) filed a petition with the Commission seeking review of the Postal Service’s Final Determination to close the Nemaha, Nebraska post office (Nemaha post office).² The Final Determination to close the Nemaha post office is affirmed.³

II. PROCEDURAL HISTORY

On November 22, 2011, the Commission established Docket No. A2012-55 to consider the appeal, designated a Public Representative, and directed the Postal Service to file its Administrative Record and any responsive pleadings.⁴

On November 23, 2011, the Postal Service filed the complete Administrative Record with the Commission.⁵ The Postal Service also filed comments requesting that the Commission affirm its Final Determination.⁶

² Petition for Review received from Rick Huey regarding the Nemaha, Nebraska post office 68414, November 4, 2011 (Petition).

³ The Commission is divided equally, 2-2, on the outcome of this appeal. In the absence of a majority, the Final Determination stands.

⁴ Order No. 989, Notice and Order Accepting Appeal and Establishing Procedural Schedule, November 22, 2011. On January 9, 2012, the Commission designated a substitute Public Representative. See Order No. 1119, Notice and Order Designating Substitute Public Representative, January 9, 2012.

⁵ The Administrative Record is attached to the United States Postal Service Notice of Filing Administrative Record–[Errata], November 23, 2011 (Administrative Record). The Administrative Record includes, as Item No. 47, the Final Determination to Close the Nemaha, NE Post Office and Establish Service by Rural Route Service (Final Determination). See United States Postal Service Notice of Filing Administrative Record, November 21, 2011.

⁶ United States Postal Service Comments Regarding Appeal, December 29, 2011 (Postal Service Comments).

Petitioner filed a participant statement supporting his Petition.⁷ On January 13, 2012, the Public Representative filed a reply brief.⁸

III. BACKGROUND

The Nemaha post office provides retail postal services and service to 81 post office box or general delivery customers. Final Determination at 2. No delivery customers are served through this post office. The Nemaha post office, an EAS-55 level facility, provides retail service from 7:45 a.m. to 12:00 p.m. and 1:00 p.m. to 2:45 p.m., Monday through Friday, and 7:45 a.m. to 9:15 a.m. on Saturday. Lobby access hours are 24 hours daily, Monday through Saturday. *Id.*

The postmaster position became vacant on April 1, 2008 when the Nemaha postmaster retired. *Id.* at 7. A non-career officer-in-charge (OIC) was installed to operate the post office. *Id.* Retail transactions average 16 transactions daily (16 minutes of retail workload). *Id.* at 2. Post office receipts for the last 3 years were \$13,626 in FY 2008; \$12,479 in FY 2009; and \$9,082 in FY 2010. There are no permit or postage meter customers. *Id.* By closing this post office, the Postal Service anticipates savings of \$25,975 annually. *Id.* at 7.

After the closure, retail services will be provided by the Brownville post office located approximately 7 miles away.⁹ *Id.* at 2. Delivery service will be provided by rural route service to cluster box units (CBUs) through the Brownville post office. The Brownville post office is an EAS-11 level post office, with retail hours of 7:00 a.m. to 4:00 p.m., Monday through Friday, and 7:00 a.m. to 8:30 a.m. on Saturday. One-hundred-forty-three (143) post office boxes are available. *Id.* The Postal Service will continue to use the Nemaha name and ZIP Code. *Id.* at 6, Concern No. 2.

⁷ Participant Statement received from Rick Huey, December 16, 2011 (Participant Statement).

⁸ Reply Comments of the Public Representative, January 13, 2012 (PR Reply Comments).

⁹ MapQuest estimates the driving distance between the Nemaha and Brownville post offices to be approximately 5.0 miles (9 minutes driving time).

IV. PARTICIPANT PLEADINGS

Petitioner. Petitioner opposes the closure of the Nemaha post office. Petitioner is concerned about how the proposed closure will affect postal services. He notes that the replacement post office in Brownville is also being considered for closure, as is another nearby postal facility, the Shubert post office. Petition at 1; Participant Statement at 1. He states that many residents do not have computers and will be unable to handle postal transactions online. Participant Statement at 2. He also states that the population of the town grows when the local nuclear power plant requires maintenance, that these individuals also rely on the Nemaha post office, and that the impact on this larger community should be taken into consideration. Participant Statement at 2.

Petitioner is also concerned that the economic savings calculations are inaccurate. He argues that the current closure plan will not save any money, because the rural carrier gets paid more than the current OIC. Participant Statement at 2. He suggests cutting senior management positions at the Postal Service, printing fewer varieties of stamps, and increasing the price of stamps as a way to save money and generate revenue. Petition at 3-4; Participant Statement at 2.

Postal Service. The Postal Service argues that the Commission should affirm its determination to close the Nemaha post office. Postal Service Comments at 2. The Postal Service believes the appeal raises three main issues: (1) the effect on postal services; (2) the impact on the Nemaha community; and (3) the economic savings expected to result from discontinuing the Nemaha post office. *Id.* at 1. The Postal Service asserts that it has given these and other statutory issues serious consideration and concludes that the determination to discontinue the Nemaha post office should be affirmed. *Id.* at 1-2.

The Postal Service explains that its decision to close the Nemaha post office was based on several factors, including:

- the postmaster vacancy;

- a minimal workload and declining office revenue;
- a variety of other delivery and retail options (including the convenience of rural delivery and retail service);
- no projected population, residential, commercial or business growth in the area;
- minimal impact on the community; and
- expected financial savings.

Id. at 4-5. The Postal Service contends that it will continue to provide regular and effective postal services to the Nemaha community when the Final Determination is implemented. *Id.* at 5.

The Postal Service also asserts that it has followed all statutorily required procedures and has addressed the concerns raised by Petitioner regarding the effect on postal services, the effect on the Nemaha community, economic savings, and the effect on postal employees. *Id.* at 5-13.

Public Representative. The Public Representative recommends remanding the Final Determination to close the Nemaha post office. PR Reply Comments at 4. He believes that the Postal Service has failed to demonstrate the ability to provide adequate replacement service if the Nemaha post office is discontinued. He notes that the planned replacement post office, the Brownville post office, is being studied for possible closure. He states that two other nearby post offices, Shubert (6 miles away) and Stella (7 miles away), are also on the list of post offices undergoing a discontinuance study. He questions whether the Auburn post office (15 miles away) could absorb the operations of all four post offices, should they all be discontinued. *Id.* at 2.

The Public Representative argues that the Postal Service has not considered that Nemaha's population swells by as many as 1,200 temporary worker-residents for several months at a time, when the Cooper Nuclear generating plant is undergoing maintenance. He asserts that the Final Determination is defective in its estimate of the financial consequences of closing. *Id.* at 3.

V. COMMISSION ANALYSIS

The Commission's authority to review post office closings is provided by 39 U.S.C. § 404(d)(5). That section requires the Commission to review the Postal Service's determination to close or consolidate a post office on the basis of the record that was before the Postal Service. The Commission is empowered by section 404(d)(5) to set aside any determination, findings, and conclusions that it finds to be (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (b) without observance of procedure required by law; or (c) unsupported by substantial evidence in the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service.

A. Notice to Customers

Section 404(d)(1) requires that, prior to making a determination to close any post office, the Postal Service must provide notice of its intent to close. Notice must be given 60 days before the proposed closure date to ensure that patrons have an opportunity to present their views regarding the closing. The Postal Service may not take any action to close a post office until 60 days after its determination is made available to persons served by that post office. 39 U.S.C. § 404(d)(4). A decision to close a post office may be appealed within 30 days after the determination is made available to persons served by the post office. 39 U.S.C. § 404(d)(5).

The Administrative Record indicates the Postal Service took the following steps in providing notice of its intent to close. On April 6, 2011, the Postal Service distributed questionnaires to customers regarding the possible change in service at the Nemaha post office. Final Determination at 2. A total of 151 questionnaires were distributed to delivery customers. Other questionnaires were made available at the retail counter. A total of 49 questionnaires were returned. On April 20, 2011, the Postal Service held a

community meeting at the Nemaha Community Building to address customer concerns. Seventy-five (75) customers attended. *Id.* On the same date, the Postal Service received a petition supporting the retention of the Nemaha post office with 57 signatures. *Id.*

The Postal Service posted the proposal to close the Nemaha post office with an invitation for comments at the Nemaha and Brownville post offices from July 13, 2011 through September 13, 2011. Final Determination at 2. The Final Determination was posted at the same two post offices from October 17, 2011 through November 18, 2011. Administrative Record, Item No. 49.

The Postal Service has satisfied the notice requirements of 39 U.S.C. § 404(d).

B. Other Statutory Considerations

In making a determination on whether or not to close a post office, the Postal Service must consider the following factors: the effect on the community; the effect on postal employees; whether a maximum degree of effective and regular postal service will be provided; and the economic savings to the Postal Service. 39 U.S.C. § 404(d)(2)(A).

Effect on the community. Nemaha, Nebraska is an incorporated community located in Nemaha County, Nebraska. Administrative Record, Item No. 16. The community is administered politically by the Nemaha Mayor and City Council. Police protection is provided by the Nemaha County Sheriff. Fire protection is provided by the Nemaha Volunteer Fire Department. The community is comprised of farmers, those who work in local businesses, and those who commute to work in nearby communities. *Id.* Residents may travel to nearby communities for other supplies and services. See *generally* Administrative Record, Item No. 22 (returned customer questionnaires and Postal Service response letters).

As a general matter, the Postal Service solicits input from the community by distributing questionnaires to customers and holding a community meeting. The Postal Service met with members of the Nemaha community and solicited input from the

community with questionnaires. In response to the Postal Service's proposal to close the Nemaha post office, customers raised concerns regarding the effect of the closure on the community. Their concerns and the Postal Service's responses are summarized in the Final Determination. Final Determination at 6-7.

Petitioner and the Public Representative are concerned about the effect of the closure of the Nemaha on the business community and also reference the increased population of Nemaha during maintenance of the Cooper Nuclear power plant. Petition at 1-2; Participant Statement at 2; PR Reply Comments at 3. The Postal Service responds that impact on the local and business community was extensively considered and that this is reflected in the Administrative Record. The Postal Service further states that carrier service is expected to be able to handle any growth in the community. Postal Service Comments at 9-10.

The Postal Service has adequately considered the effect of the post office closing on the community as required by 39 U.S.C. § 404(d)(2)(A)(i).

Effect on employees. The Postal Service states that the Nemaha postmaster retired on April 1, 2008 and that a non-career OIC has operated the Nemaha post office since then. Final Determination at 7. It asserts that after the Final Determination is implemented, the temporary OIC may be separated from the Postal Service and that no other Postal Service employee will be adversely affected. *Id.*

The Postal Service has considered the possible effects of the post office closing on the OIC and has satisfied its obligation to consider the effect of the closing on employees at the Nemaha post office as required by 39 U.S.C. § 404(d)(2)(A)(ii).

Effective and regular service. The Postal Service contends that it has considered the effect the closing will have on postal services provided to Nemaha customers. Postal Service Comments at 5. It asserts that customers of the closed Nemaha post office may obtain retail services at the Brownville post office located 7 miles away. Final Determination at 2. Delivery service will be provided by rural carrier service to CBUs through the Brownville post office. The Nemaha post office box customers may obtain Post Office Box service at the Brownville post office, which has 143 boxes available. *Id.*

For customers choosing not to travel to the Brownville post office, the Postal Service explains that retail services will be available from the carrier. Postal Service Comments at 6-7. The Postal Service adds that it is not necessary to meet the carrier for service since most transactions do not require meeting the carrier at the mailbox. *Id.* at 7.

Petitioner raises concerns about senior citizens who are unable to drive, residents who cannot afford the gas, and other residents who may not own computers. Petition at 1; Participant Statement at 2. The Postal Service responds that carrier service is especially beneficial to senior citizens and others who face challenges, because the carrier can provide delivery and retail services to CBUs. It states that Stamps by Mail are available for customer convenience and notes that stamps are available at many stores and gas stations, or by calling 1-800-STAMP-24. Postal Service Comments at 7.

Petitioner and the Public Representative also note the possible closure of the Brownville post office and other nearby post offices. Petition at 1; Participant Statement at 1; PR Reply Comments at 2. The Postal Service responds that if the Nemaha post office is indeed closed, then that fact will be considered in the discontinuance study of the Brownville post office. Postal Service Comments at 4 n.17.

The Postal Service has considered the issues raised by customers concerning effective and regular service as required by 39 U.S.C. § 404(d)(2)(A)(iii).

Economic savings. The Postal Service estimates total annual savings of \$25,975. Final Determination at 7. It derives this figure by summing the following costs: postmaster salary and benefits (\$30,738) and annual lease costs (\$3,220), minus the cost of replacement service (\$7,983). It also includes a one-time expense of \$3,500 to provide and install CBUs. *Id.*

Petitioner questions the savings calculations on the grounds that the rural carrier earns more than the OIC. Participant Statement at 2. The Postal Service states that even if the rural carrier is paid a different wage, it does not affect the savings significantly because the rural carrier delivers throughout the delivery area and does not

incur idle time serving the retail window in the post office. Postal Service Comments at 11-12.

Petitioner suggests that the Postal Service could save money by cutting vice presidents and by printing fewer varieties of stamps. He also suggests that the Postal Service could raise revenue by increasing stamp prices. Petition at 3-4; Participant Statement at 2. The Postal Service responds that it has determined that carrier service, coupled with service at the Brownville post office, is a reasonable solution that will yield economic savings. It asserts that it is not required to evaluate and reject alternative proposals. Postal Service Comments at 11.

The Public Representative notes that the Postal Service includes lease savings in its economic analysis despite the fact that the lease runs through December 31, 2013, and there is no early cancellation clause. PR Reply Comments at 3. However, even if the added lease costs had been factored into the economic savings, the Postal Service would realize net financial benefits.

The Public Representative questions using the salary and benefits of a full-time postmaster when an OIC has been running the office for years. PR Reply Comments at 3. The Nemaha post office postmaster retired on April 1, 2008. Final Determination at 2. The post office has since been staffed by a non-career OIC who, upon discontinuance of the post office, may be separated from the Postal Service. The postmaster position and the corresponding salary will be eliminated. As the Postal Service notes, “[t]he economic savings calculation conducted as part of a discontinuance study is forward-looking...If the Nemaha Post Office closes, one career slot will be eliminated. If the Post Office is not discontinued, that slot would have been filled with a career employee, and the salary and benefits to be paid would be as shown for a postmaster.” Postal Service Comments at 1-2. Furthermore, notwithstanding that the Nemaha post office has been staffed by an OIC for approximately three and a half years, even assuming the use of the presumably lower OIC salary, the Postal Service would have satisfied the requirements of section 404(d)(2)(A)(iv).

The Postal Service has satisfied the requirement that it consider economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv).

VI. CONCLUSION

The Postal Service has adequately considered the requirements of 39 U.S.C. § 404(d). Accordingly, the Postal Service's determination to close the Nemaha post office is affirmed.¹⁰

It is ordered:

The Postal Service's determination to close the Nemaha, Nebraska post office is affirmed.

By the Commission.

Shoshana M. Grove
Secretary

¹⁰ See note 3, *supra*.

DISSENTING OPINION OF CHAIRMAN GOLDWAY

The Administrative Record is inaccurate with regard to economic savings. As such, the Postal Service has not adequately considered economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv).

The Postal Service argues that savings should be calculated based on a full-time postmaster's salary. Yet the Nemaha post office has been operated by a non-career officer-in-charge (OIC) since the former postmaster retired on April 1, 2008. On the one hand, the Postal Service argues that the effect on employees of this closing will be minimal because only an OIC will be eliminated; yet on the other hand, it argues that the savings should be calculated using a full-time postmaster position.

A non-career OIC has been in place for more than 3 years. Given this extended period of time, and the Postal Service's current financial difficulties, it is clear that the Postal Service has no obligation to maintain a full-time postmaster in small facilities such as Nemaha. Upon closure of the facility, the Postal Service may, at most, avoid continuing to pay the OIC level salary.

The Postal Service already claims billions of dollars in savings from reducing labor costs. I believe the savings from substituting OICs in postmaster positions throughout the nation have already been included in those billions. There are inherent and blatant contradictions in the Administrative Record that must be corrected on remand.

In addition, the Public Representative notes that the economic analysis identified in the Final Determination mistakenly includes lease savings despite the fact that the lease term extends through December 31, 2013 and there is no early cancellation clause.

It is not the statutory responsibility of the Commission to correct the Administrative Record for the Postal Service and certainly not to make its own surmise about what and/or whether there would be savings if accurate data were in the Administrative Record. Therefore, the decision to close should be remanded to the Postal Service to correct the Administrative Record and present a more considered evaluation of potential savings.

The Public Representative notes that the proposed administrative post office in Brownville (approximately 5 miles from the Nemaha post office) is being studied for possible closure. The Public Representative also notes that two other nearby locations, the Shubert post office (approximately 8.2 driving miles away) and the Stella post office (approximately 12.8 driving miles away) are being considered for discontinuance under the Retail Access Optimization Initiative (RAOI). The Public Representative questions whether the Auburn post office (approximately 12.6 driving miles away) could absorb the operations of all four post offices, should they be discontinued.

As my colleague Vice Chairman Langley has noted in several recent separate opinions, the Postal Service should include within its discontinuance process a mechanism to ensure that due consideration is given to the impact on the community of the receiving administrative post office immediately being reviewed for discontinuance. See, e.g., Docket No. A2011-47, Order No. 1024; Docket No. A2011-67, Order No. 1075; Docket No. A2012-8, Order No. 1173; Docket No. A2012-13, Order No. 1178; Docket No. A2012-35, Order No. 1196; Docket No. A2012-27, Order No. 1219; Docket No. A2012-50, Order No. 1231.

Such consideration is particularly critical in this instance. The Commission recently issued its Advisory Opinion in Docket No. N2011-1, pointing to the fact that its closing plans do not optimize the network. In the case of Nemaha, the failure to undertake actual retail network optimization is exhibited by the Postal Service presenting the community with the option of a receiving post office that might also close,

as well two other neighboring post offices that may close.

Brownville, the replacement post office, is 5 driving miles away, but it is on the list of post offices being evaluated for possible closure, as are two other nearby post offices. The remaining post office in Auburn is approximately 12.6 driving miles away, according to MapQuest. If the closure process for these substitute post offices proceeds, customers will have access to a post office that is more than 10 miles away. Several members of Congress have publicly expressed concern that post offices that are 10 miles apart should be maintained in rural areas. The Postmaster General has expressed interest in finding other ways to serve such distant post offices rather than close them altogether.

Moreover, the Postal Service recently announced a moratorium on post office closings. It is confusing and perhaps unfair to require some citizens whose post offices have received a discontinuance notice as of December 12, 2011 to gather evidence and pursue an appeal to the Commission, while others whose post offices were in the review process, but had not yet received a discontinuance notice by December 12, 2011, have the respite of a 5-month moratorium and the opportunity to have further consideration of alternatives by the Postal Service.

The citizens of Nemaha, Nebraska and their concerns regarding the loss of a neighborhood post office should be afforded the same opportunity to be heard and considered as the citizens of the approximately 3,700 post offices fully covered by the moratorium.

Ruth Y. Goldway

DISSENTING OPINION OF VICE CHAIRMAN LANGLEY

The Postal Service also did not adequately consider the effects on the community and whether the closing is consistent with the Postal Service's provision of "a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post office are not self-sustaining" as required by 39 U.S.C. § 404(d)(2)(A)(i) and (iii).

The Administrative Record indicates that the proposed administrative post office will be the Brownville post office, which is currently being considered for discontinuance under the Retail Access Optimization Initiative (RAOI). In addition, the Public Representative notes that along with the Brownville post office, two other nearby post offices, Shubert and Stella, are also undergoing discontinuance studies under the RAOI. PR Reply Comments at 2. The Postal Service should include within its discontinuance process a mechanism to ensure that due consideration is given to the impact on the community of the receiving administrative post office immediately being reviewed for discontinuance.

Section 404(d)(5)(A) requires the Commission to set aside any determination, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. The Postal Service failed to consider that the Brownville post office, which is designated to fulfill the postal needs of the Nemaha community, is also being reviewed for discontinuance.

Moreover, the Postal Service did not adequately consider the economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv). The Postal Service should take into consideration that a non-career postmaster relief (PMR) has been in charge of this facility for nearly 4 years, since April 2008, not an EAS-55 postmaster, and reflect the PMR's salary and benefits in its cost savings analysis.

In addition, the current lease does not terminate until December 31, 2013, and does not have a 30-day termination clause. Administrative Record, Item No. 15 at 1. The Postal Service should note that any savings from the lease will not be realized for at least 23 months. As a government entity, the Postal Service should ensure that its cost/benefit analysis accurately identifies capturable cost savings and does not overstate savings.

I find that the Administrative Record evidence does not support the Postal Service's decision to discontinue operations at the Nemaha post office and should be remanded.

Nanci E. Langley